

DEPARTMENT OF PLANNING, COUNTY OF MAUI

Repeal of Chapter 2, Special Management Area Rules  
and Regulations for the Molokai Planning Commission

SUMMARY

1. Chapter 2, entitled "Special Management Area Rules and Regulations for the Molokai Planning Commission" is hereby repealed in its entirety. Any reference to chapter 2, Special Management Area Rules and Regulations for the Molokai Planning Commission shall be referred to the appropriate section of chapter 302, "Special Management Area Rules for the Molokai Planning Commission".

2. Chapter 302, entitled "Special Management Area Rules for the Molokai Planning Commission", is hereby adopted.

"TITLE MC-12"  
DEPARTMENT OF PLANNING

SUBTITLE 03  
MOLOKAI PLANNING COMMISSION

CHAPTER 302

SPECIAL MANAGEMENT AREA RULES

SUBCHAPTER 1. General Provisions

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SUBCHAPTER 1

GENERAL PROVISIONS

§12-302-1 Title. The rules in this chapter shall  
be known as the "special management area rules for the  
Molokai planning commission." [Eff. March 12, 1994  
] (Auth: HRS §§91-2, 205A-27) (Imp: §205A-29)

§12-302-2 Purpose. The purpose of these rules is  
to implement HRS chapter 205A, relating to coastal zone  
management and special management areas, and to establish  
application procedures for special management area  
emergency permits, minor permits, and use permits, time  
periods within which hearings must be held, and  
procedures to provide notice to individuals whose  
property rights may be affected. The rules further the  
policy of the state to preserve, protect, and where  
possible, restore the natural resources of the coastal  
zone. The rules also assist the commission in giving  
full consideration to the state's policy of establishing  
special controls on development within the areas along  
the shoreline to avoid the permanent loss of valuable  
coastal resources and the foreclosure of land use and  
management options of these resources, and to provide  
adequate access to beaches, recreational areas and  
natural reserves. [Eff. March 12, 1994 ]  
(Auth: HRS §§91-2, 205A-27, 205A-29, 205A-30) (Imp:  
HRS §§205A-1 through 33)

§12-302-3 Duty of the commission and the department. The commission and the department shall review all proposed actions within the special management area in accordance with these rules. Such review shall be made pursuant to the objectives, policies, and guidelines set forth herein. [Eff. March 12, 1994 ] (Auth: HRS §205A-27) (Imp: HRS §205A-2, 205A-4, 205A-26)

§12-302-4 Scope and exemptions. (a) These rules shall apply to the special management area on the island of Molokai as designated on the special management area maps and specifically excluding the islands of Kahoolawe, Lanai, and Maui.

(b) The rules in this chapter shall not apply to special management area and shoreline setback area applications that have been deemed complete by the director before the effective date of these rules. An application shall be deemed complete by the director upon receipt of final agency comments and a letter is sent by the director to the applicant to that effect. Applications deemed complete shall be processed under the rules in effect at the time the application was deemed complete. [Eff. March 12, 1994 ] (Auth: HRS §§46-4, 91-2, 205A-27, 205A-29) (Imp: HRS §205A-23)

§12-302-5 Definitions. For the purposes of this chapter, and unless it is plainly evident from the context that a different meaning is intended, the definitions of this chapter shall be those set forth in HRS sections 205A-1, 205A-22, and 205A-41 (a copy of which shall be provided pursuant to section 12-302-7), and as follows:

"Agent" means the person authorized by the applicant to represent the applicant.

"Applicant" means any individual, organization, partnership, or corporation including any utility and any agency of government, who is the owner applying for the permit or approval.

"Central coordinating agency" means the land use and codes administration division of the department of public works and waste management, County of Maui.

"Commission" means the Molokai planning commission.

"Crops" means agricultural produce or parts of plants or trees cultivated for commercial or personal use, including but not limited to the raising of

livestock and aquaculture.

"Cultural resources commission" means Maui County cultural resources commission established under chapters 2.40 and 2.88 of the Maui County Code.

"Debris line" means a line marking the landward limit of debris deposits resulting from the upper reaches of the wash of waves.

"Department" means the department of planning of the County of Maui.

"Director" means the director of the department of planning of the County of Maui.

"Director of public works and waste management" means the director of the department of public works and waste management of the County of Maui.

"Environmental impact statement" or "EIS" means an informational document that is in compliance with chapter 343, HRS, and the rules of the office of environmental quality control.

"Estuary" means that part of a river or stream or other body of water having unimpaired connection with the open sea, where the sea water is measurably diluted with fresh water derived from land drainage.

"Estuarine sanctuary" means a research area which may include any part or all of an estuary, adjoining transitional areas, and adjacent uplands, constituting to the extent feasible a natural unit, set aside to provide scientists and students the opportunity to examine over a period of time the ecological relationships with the area.

"Family" means a family as defined in title 19 of the Maui County Code, as amended.

"HRS" means the Hawaii Revised Statutes, as amended.

"Owner" means all holders of an equitable or legal interest in real property on the island of Molokai, including any lessee holding under a recorded lease with a term of five years or more.

"Plot plan" means a detailed map prepared to a scale, based upon an accurate instrument survey, defining and showing the design of the proposed action and the existing physical condition of the land, including but not limited to property boundaries, topography, natural and manmade features, trees, and structures. The director may require the applicant to set forth in the plot plan cross sections of the site at designated locations.

"Proposed action" means any use, activity or

operation proposed by an applicant on land within the special management area.

"Scenic amenities" means significant coastal features including, but not limited to, areas of vegetation, growth, land forms such as dunes or rock outcroppings, mountain and seaward visual corridors, beaches, aquatic areas, and archeological and historic sites.

"Shoreline survey" means the actual field location of the shoreline prepared by a land surveyor registered in the State of Hawaii. Such survey maps developed by the registered land surveyor shall bear the surveyor's signature and date of field survey and the certifying signature and date of the chairman of the board of land and natural resources.

"Single-family residence" means a single family dwelling, as defined in title 19 of the Maui County Code as amended.

"Urban design review board" means the Maui County urban design review board as established under chapters 2.26 and 2.40 of the Maui County Code, as amended.

"Use" means a use as defined in title 19 of the Maui County Code as amended.

"Vegetation growth" means any plant, tree, shrub, grass, or groups, clusters, or patches of the same naturally rooted and growing.

"Vegetation line" means a line marking the seaward limit of vegetation growth. [Eff. March 12, 1994]  
] (Auth: HRS §§91-2, 91-4.2, 205A-27, 205A-29)  
(Imp: HRS §205A-1, 205A-22, 205A-29)

§12-302-6 Severability. If any provision of these rules or the application thereof to any person is held invalid, the invalidity shall not affect other provisions or applications of these rules which can be given effect without the invalid provision or application. To that extent the provisions of these rules are severable. [Eff. March 12, 1994] (Auth: HRS §§91-2, 205A-29) (Imp: HRS §§91-2, 205A-9)

§12-302-7 Special management area boundaries and maps. The special management area shall be all lands so designated on the maps previously adopted by the Maui planning commission as of November 19, 1975, or as amended pursuant to section 205A-23, HRS, which maps are in the keeping of the department. These maps shall be

the official special management area to be administered and enforced under these rules. [Eff. March 12, 1994]  
] (Auth: HRS §§91-2, 205A-23, 205A-27, 205A-29)  
(Imp: HRS §205A-23)

§12-302-8 Implementation of rules. The director shall provide such applications in a form as may be necessary to accomplish the intent of these rules, and shall provide, upon request, a copy of sections of Hawaii Revised Statutes referenced in these rules. Such copies shall be provided as a convenience to the public and shall be accompanied with a disclosure cautioning readers that reproduced sections should not be relied upon to be accurate, complete, or applicable to any particular application and that reference should be made to the Hawaii Revised Statutes, all supplements thereto and Acts of the State Legislature. A charge may be imposed for copying costs as provided by law. [Eff. March 12, 1994]  
] (Auth: HRS §§91-2, 205A-290) (Imp: HRS §205A-29)

§12-302-9 (Reserved)

## SUBCHAPTER 2

### SPECIAL MANAGEMENT AREA PERMIT PROCEDURES

§12-302-10 Special management area objectives and policies. (a) The objectives and policies of this chapter shall be those set forth in HRS section 205A-2, as amended.

(b) In implementing these objectives and policies, the department or the commission, as appropriate, shall fully consider ecological, cultural, historic, and aesthetic values as well as needs for economic development. [Eff. March 12, 1994]  
] (Auth: HRS §§91-2, 91-4.2, 205A-27, 205A-29) (Imp: HRS §§205A-2, 205A-4)

§12-302-11 Special management area review guidelines. The review guidelines set forth in HRS section 205A-26, as amended, shall be used by the director and the commission, as appropriate, for the review of developments proposed in the special management area. [Eff. March 12, 1994]  
] (Auth: HRS §§91-

2, 91-4.2, 205A- 29) Imp: HRS §205A-2, 205A-4, 205A-26)

§12-302-12 Assessment and determination procedures.

(a) All proposed actions within the special management area shall be subject to an assessment and a determination made by the director. Such assessment shall be pursuant to the significance criteria set forth in this section.

(b) The applicant or the director may waive assessment and determination, and the applicant may apply for a special management area use permit pursuant to the provisions of sections 12-302-13 and 12-302-15.

(c) Assessment applications shall be filed in accordance with the following:

- (1) Any proposed action which has been assessed under the National Environmental Policy Act (42 U.S.C. §4321, et. seq.) or under chapter 343, HRS, and for which a negative declaration has been filed or a required EIS has been accepted, may apply directly for a special management area use permit or special management area minor permit.
- (2) Any applicant seeking an assessment shall submit an application form, provided by the department, to the department. The application shall require the following information and documentation:
  - (A) Identification of the applicant along with documentation of ownership or authorization by the owners of the land on which the proposed action is to occur;
  - (B) Tax map key number and acreage of the land on which the proposed action is to occur;
  - (C) A plot plan, drawn to scale, of the land upon which the proposed action is to occur, and photographs or VHS format video tape identifying the area where the proposed action is to occur;
  - (D) A shoreline survey if the land abuts the shoreline; provided, if the proposed action will occur outside of the shoreline setback area, the director may waive a survey if the shoreline is fixed by:
    - (i) Manmade structures approved by



- appropriate government agencies and for which engineering drawings exist to locate the interface between the shoreline and the structure;
- (ii) Natural stabilized geographic features such as cliffs and rock formations; or
  - (iii) If the property is not abutting the shoreline.
- (E) A written description of the proposed action, including, but not limited to, the use, length, width, height, depth, building materials, and statement of objectives;
- (F) A written description of the anticipated impacts of the proposed action on the special management area that addresses or describes:
- (i) The environmental setting of the property that is the subject of the proposed action;
  - (ii) The relationship of the proposed action to land use plans, policies, and control of the affected area;
  - (iii) The probable impact, including cumulative impacts, of the proposed action on the environment;
  - (iv) Any probable adverse environmental effects that can be avoided;
  - (v) Alternatives to the proposed action;
  - (vi) Mitigating measures proposed to minimize impact; and
  - (vii) Any irreversible and irretrievable commitment of resources.
- (G) A plan of the proposed action designating in dimensions the location of the proposed action on the land. If structures are included, the plan shall also show a dimensioned floor plan, sections, elevations, and other physical features;
- (H) Verification of the valuation of the proposed action as estimated by an architect, engineer, or contractor licensed by the department of commerce and consumer affairs, State of Hawaii, or

verification of the valuation of the proposed action as estimated by the administrator of the land use and codes administration, County of Maui;

- (I) The state land use district boundary designation, community plan designation, county zoning designation, if applicable, and any other special designation, if applicable;
- (J) An environmental assessment and negative declaration or an environmental impact statement, if required, pursuant to HRS chapter 343; and
- (K) Any other information and documentation required by the planning department to properly process the application.

(d) The assessment application shall be reviewed as follows:

- (1) Upon submission of a completed application, the director shall review the proposed action and make a written evaluation as to:

- (A) The valuation of the proposed action. The applicant's estimates of the total cost or fair market value may be verified by the director of public works and waste management. In the event of a conflict between the estimates of the applicant and the director of public works and waste management, the higher estimate amount shall be used by the director for the purposes of an assessment of the proposed action;
- (B) Whether the proposed action is or is not a development; and
- (C) The potential adverse environmental and ecological effects based upon the significance criteria set forth in section 12-302-12(e).

(e) In considering the significance of potential environmental and ecological effects, the director shall evaluate:

- (1) The sum of those effects that adversely affect the quality of the environment and the ecology, and shall evaluate the overall and cumulative adverse effects of the proposed

action.

- (2) Every phase of a proposed action, its expected primary and secondary consequences, and its cumulative and short or long-term effects. A proposed action may have a significant adverse effect on the environment when the proposed action:
- (A) Involves an irrevocable commitment to loss or destruction of any natural or cultural resources;
  - (B) Significantly curtails the range of beneficial uses of the environment;
  - (C) Conflicts with the county's or the state's long-term environmental policies or goals;
  - (D) Substantially affects the economic or social welfare and activities of the community, county, or state;
  - (E) Involves substantial secondary impacts, such as population changes and increased effects on public facilities, streets, drainage, sewage, and water systems, and pedestrian walkways;
  - (F) In itself has no significant adverse effects but cumulatively has considerable effect upon the environment or involves a commitment for larger actions;
  - (G) Substantially affects a rare, threatened, or endangered species of animal or plant, or its habitat;
  - (H) Is contrary to the state plan, county general plan, appropriate community plans, zoning and subdivision ordinances;
  - (I) Detrimentally affects air or water quality or ambient noise levels;
  - (J) Affects an environmentally sensitive area, such as flood plain, shoreline, tsunami zone, erosion-prone area, geologically hazardous land, estuary, fresh waters, or coastal waters;
  - (K) Substantially alters natural land forms and existing public views to and along the shoreline; or
  - (L) Is contrary to the objectives and policies of HRS chapter 205A, as amended.
- (f) Based upon the assessment and review of the

application, the director shall make a determination and notify the applicant in writing within thirty (30) calendar days after the application is complete that the proposed action either:

- (1) Is exempt from the requirements of this chapter because it is not a development pursuant to HRS section 205A-22;
- (2) Requires a special management area minor permit pursuant to HRS section 205A-22, which shall be processed in accordance with section 12-302-14;
- (3) Requires a special management area use permit pursuant to HRS section 205A-22, which shall be processed in accordance with sections 12-302-13 and 12-302-15;
- (4) Requires a special management area emergency permit pursuant to HRS section 205A-22, as amended, which shall be processed in accordance with section 12-302-16; or
- (5) Cannot be processed because the proposed action is not consistent with the county general plan, community plan and zoning, unless a general plan, community plan or zoning application for an appropriate amendment is processed concurrently with the SMA permit application. [Eff. March 12, 1994  
] (Auth: HRS §§91-2, 205A-27, 205A-29)  
(Imp: HRS §§205A-2, 205A-4, 205A-29, 205A-30.)

§12-302-13 Notice of application and notice of public hearing; Adequacy of notice. (a) Where a public hearing is required to be held pursuant to these rules, the applicant shall prepare a notice of application and legible map. The form of the notice shall be provided to the applicant by the department. The applicant shall ensure the information on the form is accurate. Prior to publication, the department shall review and approve the notice of application for completeness. The applicant shall submit the notice of application for publication to a newspaper within 10 days after the department has reviewed and approved the form for completeness. The applicant shall publish the notice of application once in a newspaper printed and issued at least monthly and generally circulated on the island of Molokai.

(b) A public hearing before the commission shall

commence within one hundred twenty calendar days, or as soon thereafter as possible, after the director has determined the application is complete.

(c) Where a public hearing is required to be held pursuant to these rules, the department shall notify the applicant of the date of the public hearing at least forty-five days prior to the public hearing date. The applicant's mailed notice of public hearing shall be approved by the department before mailing and shall include:

- (1) The applicant's name, mailing address, and the nature of the proposed development;
- (2) The street address of the property that is the subject of the application (if available);
- (3) The tax map key number(s) of the property;
- (4) A location map;
- (5) The name of the applicant's agent and mailing address (if applicable);
- (6) The date, time, and place of the public hearing; and
- (7) A statement that additional information may be obtained at the department's office, providing the department's address and telephone number.

(d) The applicant's mailed notice of public hearing shall be mailed not less than thirty calendar days before the hearing date by certified or registered mail, postage prepaid, to owners of real property situated within five hundred feet of the boundaries of the land that is the subject of the application. The applicant shall also send notice to all persons who have requested the commission in writing to be notified of special management area proceedings.

(e) Not less than thirty calendar days prior to the public hearing date the director shall publish a notice of public hearing once in a newspaper that is printed and issued at least twice weekly in the County and which is generally circulated throughout the County, and in a newspaper which is printed and issued at least monthly and generally circulated on the island of Molokai. The notice shall state the nature of the proposed development, the date, time, and place of the hearing, and all other matters required by law.

(f) The director may authorize the consolidation of the hearing with any other hearing required pursuant to law, or pursuant to any rules adopted thereunder.

(g) The mailed notice of public hearing shall be

deemed adequate, and the failure of any owner to receive such notice shall not invalidate any application, proceedings, assessment, or determination by the commission if the applicant, by affidavit, verifies that the names and addresses of owners of real property situated within five hundred feet of the subject property were obtained from the County of Maui real property tax roll, and that current ownership was verified with the records of the County's real property tax division, within thirty days of the mailing of notice of public hearing, stating both the date the addresses were obtained and the date notice was mailed, accompanied by receipts of certified mail. If there are multiple owners of the property, notification of the person(s) listed by name on the record of the county of Maui real property tax roll shall be deemed adequate notice as to all owners. [Eff. March 12, 1994 ] (Auth: HRS §§91-2, 205A-27) (Imp: §205A-29)

§12-302-14 Special management area minor permit procedures. If it has been determined that the proposed action requires a special management area minor permit, the assessment application submitted pursuant to section 12-302-12 may be deemed the minor permit application. The commission shall approve, approve with conditions, or deny such permit in accordance with the guidelines in HRS section 205A-26, as amended. Any final decision shall be transmitted to the applicant in writing. [Eff. March 12, 1994 ] (Auth: HRS §§91-2, 91-4.2, 205A-27, 205A-29) (Imp: HRS §§205A-26, 205A-29, 205A-30)

§12-302-15 Special management area use permit procedures. (a) Any person whose proposed development requires a special management area use permit, or who has waived an assessment by the department, shall file an application with the department on a form provided by the department, which shall require:

- (1) All information and documentation required pursuant to section 12-302-12, excluding valuation of the development;
- (2) The real property tax map key number of parcels and the names and addresses of owners of real property for real property situated within five hundred feet of the boundaries of the land on which the proposed development is

to occur;

(3) A public hearing and notice fee as set forth in the County budget; and

(4) Any other relevant information and documentation required by the director.

(b) Upon review of the application for completeness, the central coordinating agency shall refer the application to the director. For purposes of central coordinating agency review, completeness means that all required documents have been filed.

(c) Upon receipt of the application from the central coordinating agency, the director shall review the application based on the policies, objectives, and guidelines as provided in sections 12-302-10 and 12-302-11 and, if necessary, request that the applicant provide any additional data or information as may be required for review of the proposed development. The application shall not be deemed complete for agency transmittal until the director is satisfied that the application has addressed the policies, objectives, and guidelines.

(d) The director shall submit the application; with all relevant information, to appropriate agencies for review and comment. The director shall request such agencies, boards, and commissions to review and comment on the proposed development within thirty days from the date on which the application was distributed for review, and shall request such agencies to address the maintenance, restoration, and enhancement of the special management area consistent with the objectives, policies and guidelines of HRS chapter 205A, as amended.

(e) The applicant shall be required to present the proposed development, if applicable, to the urban design review board and to the cultural resources commission for comment and recommendation to the commission. The urban design review board and the cultural resources commission shall address the maintenance, restoration, and enhancement of the special management area consistent with the objectives, policies, and guidelines of HRS chapter 205A, as amended.

(f) Upon receipt of final agency comments, the application shall be deemed complete by the director and shall be scheduled for public hearing.

(g) The commission shall approve a special management area use permit, subject to terms and conditions as permitted in HRS sections 205A-26(1) and 205A-26(3), as amended, if it finds the criteria set

forth in HRS sections 205A-26(2) and 205A-26(3), as amended, have been met.

(h) Findings of fact, conclusions of law, and decision and order shall be issued in accordance with the rules of practice and procedure for the commission in effect when action is taken. [Eff. March 12, 1994]

] (Auth: HRS §§91-2, 91-4.2, 205A-26, 205A-27, 205A-29) (Imp: HRS §§205A-4, 205A-26, 205A-28, 205A-29)

§12-302-16 Special management area emergency permit procedures. (a) Any person seeking a special management area emergency permit shall file an application with the director. The application, provided by the department, shall require:

- (1) Identification of the applicant along with documentation of ownership and authorization by the owners of the property on which the proposed action is to occur;
- (2) The tax map key number(s) of the property on which the proposed action is to occur;
- (3) A written description of the proposed action, including, but not limited to, the length, width, height, depth, and type of materials for any proposed action;
- (4) A written statement of the emergency or imminent and substantial harm to the public health, safety, or welfare;
- (5) The most current shoreline survey, if available;
- (6) Photographs or VHS format video tape identifying the emergency at the affected area and shoreline property boundaries; and
- (7) Any other relevant information requested by the director.

(b) The director may waive the filing of a written application where the applicant demonstrates to the satisfaction of the director that imminent danger and substantial harm to a habitable structure or public facility would result from the delay in filing a written application. After approval of a verbal request, the director shall issue a written permit, which shall contain:

- (1) The date and time the request was made;
- (2) The date the permit was issued;
- (3) Applicant's and project names, address and telephone number;



- (4) Tax map key number (if available);
  - (5) Statement of the imminent danger posed and the substantial harm that would occur to the habitable structure or public facility if the permit were not granted; and
  - (6) The agreed upon temporary solution.
- (c) Not more than ten calendar days after the date of the verbal request, the applicant shall submit the required written emergency permit application. If the applicant fails to submit such application, information, and documentation within the ten day period, the director may require that the temporary solution be removed.
- (d) Except as provided in section 12-302-16(e), the director shall issue a special management area emergency permit where:
- (1) The director finds the criteria set forth in HRS sections 205A-22 and 205A-30, as amended, have been met;
  - (2) In the event of impending or presently occurring disaster, the mayor has waived the requirements of sections 12-302-12, 12-302-14, or 12-302-15; or
  - (3) In the event of a state-declared emergency, the governor, after conferral with and the recommendation of the mayor, has waived the requirements of sections 12-302-12, 12-302-14, or 12-302-15.
- (e) No special management area emergency permit shall allow the reconstruction of structures damaged by natural hazards to their original form if such structures were previously found not to be in compliance with the Federal Flood Insurance Program or were not legally constructed.
- (f) The director may place reasonable terms, conditions, and time stipulations upon such permit.
- (g) The director shall set an expiration date for the permit, not to exceed one hundred eighty days, and set a time limitation within which the applicant shall apply for a permit pursuant to sections 12-302-14 or 12-302-15.
- (h) The director shall submit reports of all determinations regarding emergency permits to the commission for review at the next regular meeting after the permit has been issued. Such reports shall include all facts and reasons for the determination.
- (i) If the director denies the emergency permit,

the denial shall be in writing, setting forth facts sufficient to demonstrate the application did not meet the requirements for issuance of the emergency permit pursuant to section 12-302-16(d). The applicant shall be informed of his right to appeal to the circuit court pursuant to chapter 91, HRS, as amended. [Eff.

March 12, 1994 ] (Auth: HRS §§91-2, 205A-27, 205A-29)  
(Imp: HRS §§91-2, 91-14, 205A-30)

§12-302-17 Amendments to permit terms, conditions, and time stipulations. (a) Any person who has been issued a special management area emergency permit, minor permit, or use permit may request the director or commission, as appropriate, to amend or delete any terms, conditions or time stipulations placed upon such permit.

(b) Any person seeking to amend or delete a permit condition shall file an application with the department in a form provided by the department, the content of which shall include:

- (1) The term, condition, or time stipulation to be amended or deleted;
- (2) If an extension of a time stipulation is requested, the length of time extension desired;
- (3) The reasons for the requested amendment or deletion;
- (4) A public hearing and notice fee as established in the County budget; and
- (5) Any other information and documentation requested by the director.

(c) Unless otherwise provided, any application for an extension of a time stipulation must be filed not less than sixty calendar days prior to the expiration date of the time condition, provided that the director for good cause may waive such sixty day requirement.

Unless waived by the applicant and the director, notice of the public hearing to amend the permit shall be given pursuant to the procedures set forth in section 12-302-13. A public hearing shall not be waived if a petition to intervene was filed or any person, other than the applicant, was admitted as a party to any prior proceeding on the matter, unless a written waiver from all parties have been received by the department; or, if any objections were submitted by any property owner within five-hundred feet radius of the subject property; or, if the proposed amendment to the permit terms or

conditions increases or intensifies the use.

(d) After review and final comment by appropriate agencies, the application shall be deemed complete by the director and the application shall be referred to the commission and, if a public hearing is required, set a date for the hearing and provide notice as required by section 12-302-13. The commission shall conduct a hearing in accordance with the procedures set forth in its rules.

(e) Findings of fact, conclusions of law, and decision and order for any special management area use permit application seeking to amend or delete permit terms, conditions, and time stipulations shall be issued in accordance with the rules of practice and procedure of the commission in effect when action is taken and the review guidelines as set forth in section 12-302-11. [Eff. March 12, 1994 ] (Auth: HRS §§91-2, 205A-29, 205A-30) (Imp: HRS §205A-26, 205A-29)

§§12-302-18 to 12-302-20 (Reserved)

### SUBCHAPTER 3

#### PROCEDURES TO ADOPT SPECIAL MANAGEMENT AREA RULES; DECLARATORY RULINGS; AND ADOPTION AND AMENDMENT OF BOUNDARIES AND MAPS

§12-302-21 Petition and procedures to adopt, amend, or repeal special management area rules; declaratory rulings. The commission may adopt, amend, or repeal any of its rules by following the procedures outlined in its rules of practice and procedure. Any interested person may petition the commission for a declaratory order as to applicability of any statutory provision or of any rule or order of the department or the commission pursuant to the commission's rules of practice and procedure. [Eff. March 12, 1994 ] (Auth: HRS §91-2) (Imp: HRS §§91-3, 91-4, 91-6, 91-7)

§12-302-22 Adoption and amendment of special management area boundaries and maps. (a) Any amendment to the boundaries of any special management area map adopted and filed with the department as of November 19, 1975, or as amended pursuant to section 205A-23, HRS, as amended, and these rules, may be initiated by the

director in accordance to the requirements of this section.

(b) The director may at any time initiate comprehensive review and amendments to the special management area boundaries.

(c) The commission, by a majority vote of its total membership, may direct the director to initiate a comprehensive review and amendments to the special management area boundaries.

(d) The director shall give notice of the director's intent to amend the special management area boundaries to the commission, the general public and the office of state planning, stating the initiation date and estimated completion date of the director's review and shall submit the proposed amendments to the commission.

Not less than thirty calendar days before the public hearing date, the director shall publish a notice of public hearing once in a newspaper that is printed and issued at least twice weekly in the County and which is generally circulated throughout the county. The notice shall state the proposed amendment, the date, time and place of the hearing, a map of the proposed boundary amendment, and all other matters required by law.

The notice published in the newspaper shall be deemed adequate, and the failure of any owner to receive such notice shall not invalidate any amendments, proceedings, assessment or determination by the commission.

(e) Any property owner may request that such owner's property be included in, or deleted from, the special management area by applying to the director on a form provided by the director.

(1) The application form shall require:

- (A) Identification of the applicant along with documentation of ownership and/or authorization by the property owner;
- (B) A tax map key description of the property;
- (C) A statement of the reasons in support of the amendment, including a discussion of the relationship of the proposed amendment to the policies and objectives of chapter 205A, HRS, as amended;
- (D) A statement discussing the proposed use of the land;
- (E) Hearing and notice fee as provided by law

for SMA use permit application; and  
(F) Any other information and documentation required by the director.

- (2) Upon review for completeness, the director shall refer the application to the commission and shall set a date for hearing before the commission.
- (3) The commission shall provide notice and conduct a hearing in accordance with the procedures set forth in section 12-302-22(d).
- (4) The commission shall render a final decision and issue a written order on any application for amendment to a special management area map in accordance with the procedures set forth herein.

(f) The commission may amend the special management area boundaries upon the finding that the amendments will further the objectives and policies of chapter 205A, HRS, as amended, and will be consistent with the general plan, including the Molokai community plan, and other applicable ordinances of the county of Maui. Upon review of the office of state planning, the commission shall render a final decision and issue a written order and may direct the director to issue a written order and final map within sixty calendar days after the final vote of the commission, unless otherwise extended by vote of the members of the commission. [Eff. March 12, 1994 ]  
(Auth: HRS §91-2)

§12-302-23 Appeal of director's decision. (a) Appeal of the director's decision may be made to the commission in writing not later than ten days after the receipt of the director's decision. The applicant shall state the reasons for the appeal. The commission may reverse and shall remand the decision where the appellant sets forth facts or law of a convincing nature demonstrating clear error, or manifest injustice.

(b) Appeal of the director's decision may also be made to the circuit court of the second circuit as provided for in chapter 91, HRS, as amended.  
[Eff. March 12, 1994 ] (Auth: HRS §§92-2, 91-14) (Imp: HRS §205A-29, 205A-30)

§§12-302-24 to 12-302-26 (Reserved)

ADOPTED this 9th day of February, 1994, at  
Kaunakakai, Molokai, Hawaii.

MOLOKAI PLANNING COMMISSION



WALTER RAGSDALE

Chairman, for the Molokai  
Planning Commission

APPROVED:

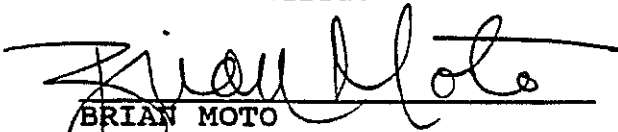


LINDA CROCKETT LINGLE

Mayor, County of Maui

Dated: 2/24/94

APPROVED AS TO FORM  
AND LEGALITY:

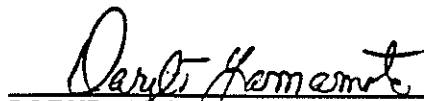


BRIAN MOTO

Deputy Corporation Counsel

Dated: March 1, 1994

Received this 2nd day of  
March, 1994.



DARYL YAMAMOTO

County Clerk

County of Maui

A: Mol4ma.fin2.11.94

CERTIFICATION

I, BRIAN MISKAE, Director of the Department of Planning, County of Maui, do hereby certify:

1. That the foregoing is a full, true, and correct copy of the Special Management Area Rules and Regulations of the Molokai Planning Commission, adopted by the Molokai Planning Commission on the 9th day of February, 1994, by affirmative vote of the proper majority following a public hearing that closed on January, 19th, 1994; and

2. That the notice of public hearing on the foregoing rules was published in the Maui News on the 8th day of November, 1993.

County of Maui



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BRIAN MISKAE

Director of Planning Department





DARYL T. YAMAMOTO  
County Clerk



DIANE A. WAKAMATSU  
Deputy County Clerk

**OFFICE OF THE COUNTY CLERK**

COUNTY OF MAUI  
200 SOUTH HIGH STREET  
WAILUKU, HAWAII 96793

'99 JUL 33 A9:40

July 28, 1999

Honorable James "Kimo" Apana  
Mayor, County of Maui  
Wailuku, Hawaii 96793

For transmittal to:

Mr. John E. Min, Director  
Department of Planning  
County of Maui  
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

Grant Yim Chun 7/30/99  
Mayor Date

Dear Mr. Min:

Transmitted herewith for your records is a copy of the  
DEPARTMENT OF PLANNING - COUNTY OF MAUI - AMENDMENTS  
TO CHAPTER 12-302 - SPECIAL MANAGEMENT AREA RULES FOR  
THE MOLOKAI PLANNING COMMISSION, effective August 5, 1999.

Respectfully,

A handwritten signature in cursive script, appearing to read "Daryl T. Yamamoto".  
DARYL T. YAMAMOTO  
County Clerk

/jym

Attachment



Amendments to Chapter 12-302  
Special Management Area Rules  
for the Molokai Planning Commission

1. Section 12-302-5, Special Management Area Rules for the Molokai Planning Commission, is amended to read as follows:

"§12-302-5 Definitions. For the purposes of this chapter, and unless it is plainly evident from the context that a different meaning is intended, the definitions of this chapter shall be those set forth in [HRS] sections 205A-1, 205A-22, and 205A-41, HRS (a copy of which shall be provided pursuant to section 12-302-7), and as follows:

"Agent" means the person authorized by the applicant to represent the applicant.

"Applicant" means any individual, organization, partnership, or corporation including any utility and any agency of government, who is the owner applying for the permit or approval.

"Central coordinating agency" means the land use and codes administration division of the department of public works and waste management, [County] county of Maui.

"Commission" means the Molokai planning commission.

"Crops" means agricultural produce or parts of plants or trees cultivated for commercial or personal use, including but not limited to the raising of livestock and aquaculture.

"Cultural resources commission" means the Maui [County] county cultural resources commission established under chapters 2.40 and 2.88 of the Maui [County Code] county code.

"Debris line" means a line marking the landward limit of debris deposits resulting from the upper reaches of the wash of waves.

"Department" means the department of planning of the [County] county of Maui.

"Director" means the director of the department of planning of the [County] county of Maui.

"Director of public works and waste management" means the director of the department of public works and waste management of the [County] county of Maui.

"Environmental impact statement" or "EIS" means an informational document that is in compliance with chapter 343, HRS, and the rules of the office of environmental quality control.

"Estuary" means that part of a river or stream or other body of water having unimpaired connection with the open sea, where the sea water is measurably diluted with fresh water derived from land drainage.

"Estuarine sanctuary" means a research area which may include any part or all of an estuary, adjoining transitional areas, and adjacent uplands, constituting to the extent feasible a natural unit, set aside to provide scientists and students the opportunity to examine over a period of time the ecological relationships with the area.

"Family" means a family as defined in title 19 of the Maui [County Code] county code, as amended.

"HRS" means the Hawaii Revised Statutes, as amended.

"Nonstructural improvements to existing commercial structures" means non-habitable improvements to existing structures, which improvements are adjunct to the main structure not to exceed fifty square feet in floor area. Improvements may include, but not be limited to: window or door replacement or addition; reroofing; storage additions; and signage. "Nonstructural improvements to existing commercial structures" also means temporary structures for special events not exceeding fourteen consecutive days, such as tents and booths.

"Owner" means all holders of an equitable or legal interest in real property on the island of Molokai, including any lessee holding under a recorded lease with a term of five years or more.

"Plot plan" means a detailed map prepared to a scale, based upon an accurate instrument survey, defining and showing the design of the proposed action and the existing physical condition of the land, including but not limited to [property] parcel boundaries, topography, natural and man made features, trees, and structures. The director may require the applicant to set forth in the plot plan cross sections of the site at designated locations.

"Proposed action" means any use, activity or operation proposed by an applicant on land within the special management area.

"Scenic amenities" means significant coastal features including, but not limited to, areas of vegetation, growth, land forms such as dunes or rock outcroppings, mountain and seaward visual corridors, beaches, aquatic areas, and archeological and historic sites.

"Shoreline survey" means the actual field location of the shoreline prepared by a land surveyor registered in the State of Hawaii. Such survey maps developed by the registered land surveyor shall bear the surveyor's signature and date of field survey and the certifying signature and date of the chairman of the board of land and natural resources.

"Single-family residence" means a single family dwelling, as defined in title 19 of the Maui [County Code] county code, as amended.

"Urban design review board" means the Maui [County] county urban design review board as established under chapters 2.26 and 2.40 of the Maui [County Code] county code, as amended.

"Use" means a use as defined in title 19 of the Maui [County Code] county code, as amended.

"Vegetation growth" means any plant, tree, shrub, grass, or groups, clusters, or patches of the same naturally rooted and growing.

"Vegetation line" means a line marking the seaward limit of vegetation growth." [Eff 3/12/94, am 8/5/99] (Auth: HRS §§91-2, 91-4.2, 205A-27, 205A-29) (Imp: HRS §§ 205A-1, 205A-22, 205A-29)

2. Section 12-302-12, Special Management Area Rules for the Molokai Planning Commission, is amended to read as follows:

"§12-302-12 Assessment and determination procedures. (a) All proposed actions within the special management area shall be subject to an assessment and a determination made by the director. Such assessment shall be pursuant to the significance criteria set forth in this section.

(b) The applicant or the director may waive assessment and determination, and the applicant may apply for a special management area use permit pursuant to the provisions of sections 12-302-13 and 12-302-15.

(c) Assessment applications shall be filed in accordance with the following:

- (1) Any applicant for a proposed action which has been assessed under the National Environmental Policy Act (42 U.S.C. §4321, et. seq.) or under chapter 343, HRS, and for which a [negative declaration] findings of no significant impact (FONSI) has been filed or a required IS has been accepted, may apply directly for a special management area use permit or special management area minor permit.
- (2) Any applicant seeking an assessment shall submit an application form, provided by the department, to the central coordinating agency. The application shall require the following information and documentation:
  - (A) Identification of the applicant along with documentation of ownership or authorization by the owners of the [land] parcel on which the proposed action is to occur;
  - (B) Tax map key number and acreage of the [land] parcel on which the proposed action is to occur;
  - (C) A plot plan, drawn to scale, of the [land] parcel upon which the proposed action is to occur, and photographs or VHS format video tape identifying the area where the proposed action is to occur;
  - (D) A shoreline survey if the [land] parcel abuts the shoreline; provided, if the proposed action will occur outside of the shoreline setback area, the director may waive a survey if [the shoreline is fixed by]:
    - (i) [Manmade] The shoreline is fixed by manmade structures approved by appropriate government agencies and for which engineering drawings exist to locate the interface between the shoreline and the structure;
    - (ii) [Natural] The shoreline is fixed by a natural stabilized geographic features such as cliffs and rock formations; or
    - (iii) [If the property] The parcel is not

- abutting the shoreline.
- (E) A written description of the proposed action, including but not limited to the use, length, width, height, depth, building materials, and statement of objectives;
  - (F) A written description of the anticipated impacts of the proposed action on the special management area that addresses or describes:
    - (i) The environmental setting of the [property] parcel that is the subject of the proposed action;
    - (ii) The relationship of the proposed action to land use plans, policies, and control of the affected area;
    - (iii) The probable impact, including cumulative impacts, of the proposed action on the environment;
    - (iv) Any probable adverse environmental effects that can be avoided;
    - (v) Alternatives to the proposed action;
    - (vi) Mitigating measures proposed to minimize impact; and
    - (vii) Any irreversible [and] or irretrievable commitment of resources.
  - (G) A plan of the proposed action designating in dimensions the location of the proposed action on the [land] parcel. If structures are included, the plan shall also show a dimensioned floor plan, sections, elevations, and other physical features;
  - (H) [Verification of the] A written valuation of the proposed action as estimated by an architect, engineer, or contractor licensed by the department of commerce and consumer affairs, State of Hawaii, or [verification of the] written valuation of the proposed action as estimated by the administrator of the land use and codes administration, [County] county of Maui;
  - (I) The state land use district boundary designation, community plan designation, county zoning designation, [if

- applicable,] and any other special designation, if applicable;
- (J) An environmental assessment and [negative declaration] findings of no significant impact or an environmental impact statement, if required, pursuant to [HRS] chapter 343, HRS; [and]
  - (K) Any other information and documentation required by the [planning] department to properly process the application; and
  - (L) An administrative fee as established in the county budget.
- (d) The assessment application shall be reviewed as follows:
- (1) Upon submission of a completed application, the director shall review the proposed action and make a written evaluation as to:
    - (A) The valuation of the proposed action. The applicant's estimates of the total cost or fair market value may be verified by the director of public works and waste management. In the event of a conflict between the estimates of the applicant and the director of public works and waste management, the higher estimate amount shall be used by the director for the purposes of an assessment of the proposed action;
    - (B) Whether the proposed action is or is not a development; and
    - (C) The potential adverse environmental and ecological effects based upon the significance criteria set forth in [section 12-302-12(e)] subsection (e).
  - (e) In considering the significance of potential environmental and ecological effects, the director shall evaluate:
    - (1) The sum of those effects that adversely affect the quality of the environment and the ecology, and shall evaluate the overall and cumulative adverse effects of the proposed action.
    - (2) Every phase of a proposed action, its expected primary and secondary consequences, and its cumulative and short or long-term effects. A proposed action may have a



significant adverse effect on the environment when the proposed action:

- (A) Involves an irrevocable commitment to loss or destruction of any natural or cultural resources;
- (B) Significantly curtails the range of beneficial uses of the environment;
- (C) Conflicts with the county's or the state's long-term environmental policies or goals;
- (D) Substantially affects the economic or social welfare and activities of the community, county, or state;
- (E) Involves substantial secondary impacts, such as population changes and increased effects on public facilities, streets, drainage, sewage, and water systems, and pedestrian walkways;
- (F) In itself has no significant adverse effects but cumulatively has considerable effect upon the environment or involves a commitment for larger actions;
- (G) Substantially affects a rare, threatened, or endangered species of animal or plant, or its habitat;
- (H) Is contrary to the state plan, county's general plan, appropriate community plans, zoning and subdivision ordinances;
- (I) Detrimentally affects air or water quality or ambient noise levels;
- (J) Affects an environmentally sensitive area, such as flood plain, shoreline, tsunami zone, erosion-prone area, geologically hazardous land, estuary, fresh waters, or coastal waters;
- (K) Substantially alters natural land forms and existing public views to and along the shoreline; or
- (L) Is contrary to the objectives and policies of [HRS] chapter 205A, HRS.

(f) Based upon the assessment and review of the application, the director shall make a determination and notify the applicant in writing within thirty [(30)] calendar days after the application is complete that the proposed action either:

- (1) Is exempt from the requirements of this

chapter because it is not a development pursuant to [HRS] section 205A-22, HRS, as amended;

- (2) Requires a special management area minor permit pursuant to [HRS] section 205A-22, HRS, as amended, which shall be processed in accordance with section 12-302-14;
- (3) Requires a special management area use permit pursuant to [HRS] section 205A-22, HRS, as amended, which shall be processed in accordance with sections 12-302-13 and 12-302-15;
- (4) Requires a special management area emergency permit pursuant to [HRS] section 205A-22, HRS, as amended, which shall be processed in accordance with section 12-302-16; or
- (5) Cannot be processed because the proposed action is not consistent with the county general plan, community plan, and zoning, unless a general plan, community plan, or zoning application for an appropriate amendment is processed concurrently with the SMA permit application." [Eff 3/12/94, am 8/5/99] (Auth: HRS §§91-2, 205A-27, 205A-29) (Imp: HRS §§205A-2, 205A-4, 205A-29, 205A-30.)

3. Section 12-302-13, Special Management Area Rules for the Molokai Planning Commission, is amended to read as follows:

"§12-302-13 Notice of application and notice of public hearing; [Adequacy] adequacy of notice. (a) Where a public hearing is required to be held pursuant to these rules, the applicant shall prepare a notice of application and legible map. The form of the notice shall be provided to the applicant by the department. Prior to publication, the department shall review the notice of application for completeness. The applicant shall submit the notice of application for publication to a newspaper within [10] ten days of departmental approval. The applicant shall publish the notice of application once in a newspaper printed and issued at least monthly and generally circulated on the island of Molokai.

(b) A public hearing before the commission shall

commence within one hundred twenty calendar days, or as soon thereafter, after the director has determined the application is complete.

(c) Where a public hearing is required to be held pursuant to these rules, the department shall notify the applicant of the date of the public hearing at least forty-five days prior to the public hearing date. The applicant's mailed notice of public hearing shall be approved by the department before mailing and shall include:

- (1) The applicant's name, mailing address, and the nature of the proposed development;
- (2) The street address of the [property] parcel that is the subject of the application (if available);
- (3) The tax map key number(s) of the [property] parcel;
- (4) A location map;
- (5) The name of the applicant's agent and mailing address (if applicable);
- (6) The date, time, and place of the public hearing; and
- (7) A statement that additional information may be obtained at the department's office, providing the department's address and telephone number.

(d) The applicant's mailed notice of public hearing shall be mailed not less than thirty calendar days before the hearing date by certified or registered mail, postage prepaid, to owners of real property situated within five hundred feet of the boundaries of the [land] parcel that is the subject of the application. The applicant shall also send notice to all persons who have requested the commission in writing to be notified of special management area proceedings.

(e) Not less than thirty calendar days prior to the public hearing date the director shall publish a notice of public hearing once in a newspaper that is printed and issued at least twice weekly in the [County] county and which is generally circulated throughout the [County] county, and in a newspaper which is printed and issued at least monthly and generally circulated on the island of Molokai. The notice shall state the nature of the proposed development, the date, time, and place of the hearing, and all other matters required by law.

(f) The director may authorize the consolidation of the hearing with any other hearing required pursuant to

law, or pursuant to any rules adopted thereunder.

(g) The mailed notice of public hearing shall be deemed adequate, and the failure of any owner to receive such notice shall not invalidate any application, proceedings, assessment, or determination by the commission if the applicant, by affidavit, verifies that the names and addresses of owners of real property situated within five hundred feet of the subject [property] parcel were obtained from the [County] county of Maui real property tax roll, and that current ownership was verified with the records of the [County's] county's real property tax division, within thirty days of the mailing of notice of public hearing, stating both the date the addresses were obtained and the date notice was mailed, accompanied by receipts of certified mail. If there are multiple owners of the property, notification of the person(s) listed by name on the records of the county of Maui real property tax roll shall be deemed adequate notice as to all owners." [Eff 3/12/94, am 8/5/99] (Auth: HRS §§91-2, 205A-27) (Imp: §205A-29)

4. Section 12-302-14, Special Management Area Rules for the Molokai Planning Commission, is amended to read as follows:

"§12-302-14 Special management area minor permit procedures. (a) If it had been determined that the proposed action requires a special management area minor permit, the assessment application submitted pursuant to section 12-302-12 may be deemed the minor permit application. The commission, except as provided in [section 12-302-14(b)] subsection (b), shall approve, approve with conditions, or deny such permit in accordance with the guidelines in [HRS] section 205A-26, HRS, as amended. Any final decision shall be transmitted to the applicant in writing.

(b) The director may, in accordance with the guidelines in [HRS] section 205A-26, HRS, as amended, approve or approve with conditions a special management area minor permit application for a development limited to the erection, for a period of not more than fourteen consecutive days, of temporary structures and uses when such development is substantially the same as a development previously erected by the applicant pursuant to a special management area minor permit and the

applicant satisfactorily conformed to the requirements of the applicant's previous permit.

(c) The director shall notify the commission, at the commission's next regularly scheduled meeting, the issuance by the director of a special management area minor permit, receipt of which shall be acknowledged by the commission. Such notification shall include, but not be limited to, the name of the applicant, the development authorized by the permit, and the location and purpose of the development." [Eff 3/12/94, am 4/28/95, am 8/5/99] (Auth: HRS §§91-2, 91-4.2, 205A-27, 205A-29) (Imp: HRS §§205A-26, 205A-29, 205A-30)

5. Section 12-302-15, Special Management Area Rules for the Molokai Planning Commission, is amended to read as follows:

"§12-302-15 Special management area use permit procedures. (a) Any person whose proposed development requires a special management area use permit, or who has waived an assessment by the department, shall file an application with the department on a form provided by the department, which shall require:

- (1) All information and documentation required pursuant to section 12-302-12, excluding valuation of the development;
- (2) The real property tax map key number of parcels and the names and addresses of owners of real property for real property situated within five hundred feet of the boundaries of the [land] parcel on which the proposed development is to occur;
- (3) [A public hearing and notice fee as set forth] An administrative fee as established in the [County] county budget; and
- (4) Any other relevant information and documentation required by the director.

(b) Upon review of the application for completeness, the central coordinating agency shall refer the application to the director. For purposes of central coordinating agency review, completeness means all required documents have been filed.

(c) Upon receipt of the application from the central coordinating agency, the director shall review the application based on the policies, objectives, and guidelines as provided in sections 12-302-10 and 12-302-

11 and, if necessary, request that the applicant provide any additional data or information as may be required for review of the proposed development. The application shall not be deemed complete for agency transmittal until the director is satisfied that the application has addressed the policies, objectives and guidelines.

(d) The director shall submit the application, with all relevant information, to appropriate agencies for review and comment. The director shall request such agencies, boards, and commissions to review and comment on the proposed development within thirty days from the date on which the application was distributed for review, and shall request such agencies to address the maintenance, restoration, and enhancement of the special management area consistent with the objectives, policies and guidelines of [HRS] chapter 205A, HRS, as amended.

(e) [The applicant shall be required] The director shall inform the applicant of any legal requirement to present the proposed development, if applicable, to the urban design review board and to the cultural resources commission for comment and recommendations to the commission. The urban design review board and the cultural resources commission shall address the maintenance, restoration and enhancement of the special management area consistent with the objectives, policies, and guidelines of [HRS] chapter 205A, HRS, as amended.

(f) Upon receipt of final agency comments, the application shall be deemed complete by the director and shall be scheduled for public hearing.

(g) The commission shall approve a special management area use permit, subject to terms and conditions as permitted in [HRS sections] subsections 205A-26(1) and 205A-26(3), HRS, as amended, if it finds the criteria set forth in [HRS sections] subsections 205A-26(2) and 205A-26(3), HRS as amended, have been met.

(h) Findings of fact, conclusions of law, and decision and order shall be issued in accordance with the rules of practice and procedure for the commission in effect when action is taken." [Eff 3/12/94, am 8/5/99]  
(Auth: HRS §§91-2, 91-4.2, 205A-26, 205A-27, 205A-29)  
(Imp: HRS §§205A-4, 205A-26, 205A-28, 205A-29)

6. Section 12-302-16, Special Management Area Rules for the Molokai Planning Commission, is amended to read as follows:

"§12-302-16 Special management area emergency permit procedures. (a) Any person seeking a special management area emergency permit shall file an application with the director. The application, provided by the department, shall require:

- (1) Identification of the applicant along with documentation of ownership and authorization by the owners of the [property] parcel on which the proposed action is to occur;
- (2) The tax map key number(s) of the [property] parcel on which the proposed action is to occur;
- (3) A written description of the proposed action, including, but not limited to, the length, width, height, depth, and type of materials for any proposed action;
- (4) A written statement of the emergency or imminent and substantial harm to the public health, safety, or welfare; and why the proposed development would be immediately required to prevent substantial physical harm to persons or property, or to allow the reconstruction of structures damaged by natural hazards to their original form;
- (5) The most current shoreline survey, if available;
- (6) Photographs or VHS format video tape identifying the emergency at the affected area and shoreline property boundaries; [and]
- (7) Any other relevant information requested by the director[.]; and
- (8) An administrative fee as established in the county budget.

(b) The director may waive the filing of a written application where the applicant demonstrates to the satisfaction of the director that imminent danger and substantial harm to a habitable structure or public facility would result from the delay in filing a written application. After approval of [a verbal] an oral request, the director shall issue a written permit, which shall contain:

- (1) The date and time the request was made;
- (2) The date the permit was issued;
- (3) Applicant's and project names, address and telephone number;
- (4) Tax map key number (if available);
- (5) Statement of the imminent danger posed and the substantial harm that would occur to the habitable structure or public facility if the permit were not granted; and
- (6) The [agreed upon] permitted temporary [solution] measures.

(c) Not more than ten calendar days after the date of the [verbal] oral request, the applicant shall submit the required written emergency permit application. If the applicant fails to submit such application, information, and documentation within the ten day period, the director may require that the temporary [solution] measures be removed.

(d) Except as provided in, the director shall issue a special management area emergency permit where:

- (1) The director finds the criteria set forth in [HRS] sections 205A-22 and 205A-30, HRS, as amended, have been met;
- (2) In the event of impending or presently occurring disaster, the mayor has waived the requirements of sections 12-302-12, 12-302-14, or 12-302-15; or
- (3) In the event of a state-declared emergency, the governor, after conferral with and the recommendation of the mayor, has waived the requirements of sections 12-302-12, 12-302-14, or 12-302-15.

(e) No special management area emergency permit shall allow the reconstruction of structures damaged by natural hazards to their original form if such structures were previously found not to be in compliance with the [Federal Flood Insurance Program] federal flood insurance program or were not legally constructed.

(f) The director may place reasonable terms, conditions, and time stipulations upon such permit.

(g) The director shall set an expiration date for the permit, not to exceed one-hundred eighty days, and set a time limitation within which the applicant shall apply for a permit pursuant to sections 12-302-14 or 12-302-15.

(h) The director shall submit reports of all determinations regarding emergency permits to the



commission for review at the next regular meeting after the permit has been issued. Such reports shall include all facts and reasons for the determination.

(i) If the director denies the emergency permit, the denial shall be in writing, setting forth facts sufficient to demonstrate the application did not meet the requirements for issuance of the emergency permit pursuant to [section 12-302-16(d)] subsection (d). The applicant shall be informed of his right to appeal [to the circuit court pursuant to chapter 91, HRS, as amended] pursuant to section 12-302-26 herein." [Eff 3/12/94, am 8/5/99] (Auth: HRS §§91-2, 205A-27, 205A-29) (Imp: HRS §§91-2, 91-14, 205A-30)

7. Section 12-302-17, Special Management Area Rules for the Molokai Planning Commission, is amended to read as follows:

"§12-302-17 Amendments to and determinations of permit terms, conditions, and time stipulations. (a) Any person who has been issued a special management area emergency permit, minor permit, or use permit may request the director or commission, as appropriate, to amend, [or] delete, or determine any terms, conditions or time stipulations placed upon such permit. For purposes of this section, determination means interpretation on the intent of a condition of approval.

(b) Any person seeking to amend, [or] delete, or determine a permit condition shall file an application with the department in a form provided by the department, the content of which shall include:

- (1) The term, condition, or time stipulation to be amended, [or] deleted, or determined;
- (2) If an extension of a time stipulation is requested, the length of time extension desired;
- (3) The reasons for the requested amendment, [or] deletion, or determination;
- (4) [A public hearing and notice] An administrative fee as established in the [County] county budget; and
- (5) Any other information and documentation requested by the director.

(c) Unless otherwise provided, any application for an extension of a time stipulation must be filed not less than sixty calendar days prior to the expiration date of

the time condition, provided that the director for good cause may waive such sixty day requirement.

Unless waived by the applicant and the director, notice of the public hearing to amend or determine the permit shall be given pursuant to the procedures set forth in section 12-302-13. A public hearing shall not be waived if a petition to intervene was filed or any person, other than the applicant, was admitted as a party to any prior proceeding on the matter, unless a written waiver from all parties has been received by the department; or, if any objections were submitted by any property owner within five-hundred feet radius of the subject property; or if the proposed amendment to the permit terms or conditions increases or intensifies the use. In instances in which the proposed amendment or determination does not clearly pertain to or could not affect the same rights, privileges or interests on which the intervention or objection was based, a written waiver from all parties or persons shall not be required for purposes of waiving a public hearing.

(d) Unless otherwise specified in permit conditions, the director may issue a written approval for a special management area use permit transfer, if the permit holder submits a written request for a permit transfer to include the following:

- (1) Reason(s) for permit transfer;
- (2) Transferor's consent; and
- (3) Notarized affidavit from transferee acknowledging the conditions established with the subject permit and agreement by transferee to comply with these conditions.

The director shall notify the commission, at the commission's next regularly scheduled meeting, of the issuance of any permit transfer, receipt of which shall be acknowledged by the commission. Such notification shall include, but not be limited to, the aforementioned information provided to the department and permit transfer approval letter. Nothing in this section shall prevent the director from forwarding any permit transfer request to the commission for consideration in accordance with procedures set forth in this section.

[(d)] (e) After review and final comment by appropriate agencies, the application shall be deemed complete by the director, and the application shall be referred to the commission and, if a public hearing is required, set a date for the hearing and provide notice as required by

section 12-302-13. The commission shall conduct a hearing in accordance with the procedures set forth in its rules.

[(e)] (f) Findings of fact, conclusions of law, and decision and order for any special management area use permit application seeking to amend or delete permit terms, conditions, and time stipulations shall be issued in accordance with the rules of practice and procedure of the commission in effect when action is taken and the review guidelines as set forth in section 12-302-11."

[Eff 3/12/94, am 8/5/99] (Auth: HRS §§91-2, 205A-29, 205A-30) (Imp: HRS §205A-26, 205A-29)

8. Section 12-302-22, Special Management Area Rules for the Molokai Planning Commission, is amended to read as follows:

"§12-302-22 Adoption and amendment of special management area boundaries and maps. (a) Any amendment to the boundaries of any special management area map adopted and filed with the department as of November 19, 1975, or as amended pursuant to section 205A-23, HRS, as amended, and these rules, may be initiated by the director in accordance to the requirements of this section.

(b) The director may at any time initiate comprehensive review and amendments to the special management area boundaries.

(c) The commission, by a [majority] two-thirds vote of its total membership, may direct the director to initiate a comprehensive review and amendments to the special management area boundaries.

(d) The director shall give notice of the director's intent to amend the special management area boundaries to the commission, the general public and the office of [state] planning, stating the initiation date and estimated completion date of the director's review and shall submit the proposed amendments to the commission.

Not less than thirty calendar days before the public hearing date, the director shall publish a notice of public hearing once in a newspaper that is printed and issued at least twice weekly in the [County] county and which is generally circulated throughout the county. The notice shall state the proposed amendment, the date, time

and place of the hearing, a map of the proposed boundary amendment, and all other matters required by law.

The notice published in the newspaper shall be deemed adequate, and the failure of any owner to receive such notice shall not invalidate any amendments, proceedings, assessment or determination by the commission.

(e) Any property owner may request that such owner's property be included in, or deleted from, the special management area by applying to the director on a form provided by the director.

(1) The application form shall require:

- (A) Identification of the applicant along with documentation of ownership and/or authorization by the property owner;
- (B) A tax map key description of the property;
- (C) A statement of the reasons in support of the amendment, including a discussion of the relationship of the proposed amendment to the policies and objectives of chapter 205A, HRS, as amended;
- (D) A statement discussing the proposed use of the land;
- (E) Hearing and notice fee as provided by law for SMA use permit application; and
- (F) Any other information and documentation required by the director.

(2) Upon review for completeness, the director shall refer the application to the commission and shall set a date for hearing before the commission.

(3) The commission shall provide notice and conduct a hearing in accordance with the procedures set forth in [section 12-302-22(d)] subsection (d).

(4) The commission shall render a final decision and issue a written order on any application for amendment to a special management area map in accordance with the procedures set forth herein.

(f) The commission may amend the special management area boundaries only upon the finding that the amendments will further the objectives and policies of chapter 205A, HRS, as amended, and will be consistent with the general plan, including the Molokai community plan, and other

applicable ordinances of the county of Maui. Upon review of the office of [state] planning, the commission shall render a final decision and issue a written order and may direct the director to issue a written order and final map within sixty calendar days after the final vote of the commission, unless otherwise extended by vote of the members of the commission." [Eff 3/12/94, am 8/5/99] (Auth: HRS §91-2)

9. Section 12-302-23, Special Management Area Rules for the Molokai Planning Commission, is amended in its entirety to read as follows:

"§12-302-23 [Appeal of director's decision. (a) Appeal of the director's decision may be made to the commission in writing not later than ten days after the receipt of the director's decision. The applicant shall state the reasons for the appeal. The commission may reverse and shall remand the decision where the appellant sets forth facts or law of a convincing nature demonstrating clear error, or manifest injustice.

(b) Appeal of the director's decision may also be made to the circuit court of the second circuit as provided for in chapter 91, HRS, as amended] Enforcement.

(a) The department shall enforce these rules, except as otherwise provided herein.

(b) Any development pursuant to section 205A-22, HRS, as amended, that has not received a required special management area emergency permit, minor permit, or use permit pursuant to this part or complied with conditions established with such a permit, shall be removed or the violation shall be corrected by immediate application for and subsequent granting of the appropriate permit or other means as determined by the director. No other state or county permit or approval shall be construed as special management area permit approval pursuant to this part.

(c) Where the shoreline is affected by a manmade structure that has not been authorized with government agency permits required by law, if any part of the structure is on private property, then for purposes of enforcement of this part, the development shall be construed to be entirely within the special management area and shall be removed or the violation shall be corrected.

- (d) Issuance of notice of violation and order.
- (1) The landowner or the alleged violator, or both, shall be notified by the department by certified or registered mail of an alleged violation of this rule, any permit issued pursuant thereto, or any condition of a special management area permit approval. The notice of violation and order shall include, but not be limited to, the specific section of this rule which has been violated, the nature of the violation, and the remedy(ies) available. The notice of violation and order may also require that the violative activity cease, or that the violative development be removed; that a civil fine be paid not to exceed \$10,000 per violation; and that a civil fine be paid not to exceed \$1,000 per day for each day in which the violation persists, in addition to the foregoing and any other penalties.
- (2) The notice of violation and order shall state that the order shall become final thirty days after the date of its mailing, unless written request for a hearing is mailed or delivered to the department within said thirty days. Nothing in this section shall prevent the landowner or violator from seeking to negotiate a settlement or resolve a dispute.
- (3) If the violator seeks a negotiated settlement with the department, but waives the right to a hearing, the department, in consultation with the corporation counsel, may negotiate a settlement agreement with the landowner or, if appropriate, the violator, that provides for cure of the violation, set any fine, and inspection of parcel by the enforcement agency and the department. The proposed settlement shall be forwarded to the commission for final action.
- (4) Any request for a hearing shall be in writing and delivered, or mailed and postmark dated, to the department within thirty days, as stated on the notice. Upon receipt of a request for a hearing, the department shall specify a time and place for the person subject to the order to appear and be heard.

The hearing shall be conducted by the director or the director's designee in accordance with the provisions of chapter 91, HRS, as amended.

(5) The department, in consultation with the department of the corporation counsel, may institute a civil action in any court of competent jurisdiction for the enforcement of any settlement agreement or order issued pursuant to this section.

(6) Nothing in this section shall prohibit the department, through the corporation counsel, from filing an order or motion directly with a court in the event that public health, safety and welfare may be at risk. [Eff 3/12/94, am 8/5/99] (Auth: HRS §205A-43, 43.6) (Imp: HRS §43.6)

10. Chapter 12-302, Special Management Area Rules for the Molokai Planning Commission, is amended by adding a new section 12-302-24, to read as follows:

"§12-302-24 Conflicts with other laws. In case of a conflict between the requirements of any other state law or county ordinance regarding the special management area, the more restrictive requirements shall apply in furthering the purposes of this part. Nothing contained in this part shall be construed to diminish the jurisdiction of the state department of transportation over wharves, airports, docks, piers, or other commercial harbors, and any other maritime facilities constructed by the state; provided that such plans are submitted for the review and information of the officer of the respective agency charged with the administration of the county zoning laws, and found not to conflict with any county ordinances, zoning laws, and building codes." [Eff 8/5/99] (Auth: HRS §205A-48) (Imp: HRS §205A-48)

11. Chapter 12-302, Special Management Area Rules for the Molokai Planning Commission, is amended by adding a new section 12-302-25, to read as follows:

"§12-302-25 Penalties. Any person who violates any provision of these rules shall be liable for an initial civil fine not to exceed \$10,000 per violation and maximum daily fine of \$1,000 in addition to any other penalties until the violation is corrected. A civil fine

may be imposed by the department after an opportunity for a hearing under chapter 91, HRS, as amended, unless said hearing is otherwise waived. A special management area permit application submitted subsequent to an applicant's having completed the development or having been cited for the activity or construction without having obtained special management area approval, shall not stay any order to pay civil fines." [Eff 8/5/99] (Auth: HRS §205A-32) (Imp: HRS §§205A-22, 26, 28, 29, 20, 33)

12. Chapter 12-302, Special Management Area Rules for the Molokai Planning Commission, is amended by adding a new section 12-302-26, to read as follows:

"§12-302-26 Appeal of director's decision. (a) Appeal of the director's decision may be made to the commission in writing not later than ten days after the receipt of the director's written decision. The appellant shall state the reasons for the appeal and submit an administrative fee as established in the county budget. The commission may reverse and remand the decision to the director if the appellant sets forth facts or law of a convincing nature demonstrating clear error, or manifest injustice.

(b) Appeal of the commission's decision may be made to the circuit court of the second circuit as provided for in the commission's rules and chapter 91, HRS, as amended." [Eff 8/5/99] (Auth: HRS Chapter 91, §205A-49) (Imp: HRS §205A-49)

13. Material, except source notes, to be repealed is bracketed. New material is underscored.

14. Additions to update source notes to reflect these amendments are not underscored.


15. These amendments to title 12, chapter 302, Special Management Area Rules for the Molokai Planning Commission, shall take effect ten days after filing with the Office of the County Clerk.

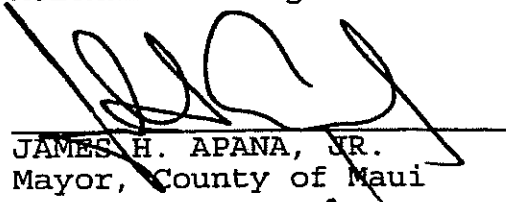


ADOPTED this 9th day of July,  
1999, at Kaunakakai, Molokai, Hawaii.

DEPARTMENT OF PLANNING

  
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JOHN E. MIN  
Planning Director

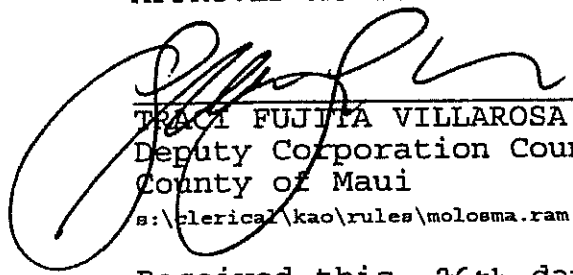
  
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BARBARA J. HALINIAK, Chair  
Molokai Planning Commission

  
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JAMES H. APANA, JR.  
Mayor, County of Maui

Approved this 19 day of

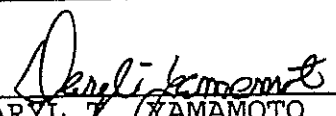
July, 1999

APPROVED AS TO FORM AND LEGALITY:

  
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TRACI FUJITA VILLAROSA  
Deputy Corporation Counsel  
County of Maui

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Received this 26th day of  
July, 19 99.

  
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DARYL T. YAMAMOTO  
Clerk, County of Maui

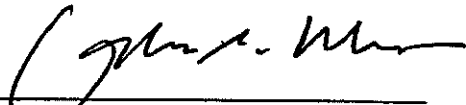
CERTIFICATION

I, JOHN E. MIN, Director of Planning, Department of Planning, County of Maui, do hereby certify:

1. That the foregoing is a full, true and correct copy of the Amendments to the Special Management Area Rules for the Molokai Planning Commission drafted in Ramseyer format which were adopted by the Molokai Planning Commission on the 9th day of July, 1999, by affirmative vote of the proper majority, following public hearings on June 10, 1998 and March 24, 1999; and

2. That the notices of public hearing on the foregoing rules were published in the Maui News on April 30, 1998 and February 22, 1999.

COUNTY OF MAUI



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JOHN E. MIN  
Planning Director